IN THE HIGH COURT OF PUNJAB AND HARYANA AT CHANDIGARH

C.W.P. No.13595 of 2004

Date of Decision: 21.11.2006

Gurdev Singh ... Petitioner

Versus

State of Punjab and others. .. Respondents

CORAM : HON'BLE MR. JUSTICE J.S. KHEHAR
HON'BLE MR. JUSTICE S.D. ANAND

Present : Mr. Vipin Mahajan, Advocate,
for the petitioner.

Mr. Ashok Aggarwal, Additional Advocate General, Punjab,
for the respondents.

J.S. Khehar, J. (Oral)

While the petitioner was holding the post of Head Constable, he was issued a charge-sheet, wherein the sole charge levelled against him, was that he had remained absent from duty for a period of 3 months, 20 days, 5 hours and 25 minutes, without informing the authorities, and without seeking prior permission of the competent authority. Consequent upon, the finding of guilt on the aforesaid charge at the hands of the Enquiry Officer, the petitioner was issued two show cause notices dated 03.10.1998 and 04.12.1999, proposing the punishment of dismissal from service. On the receipt of the petitioner's reply, the Senior Superintendent of Police, Tarn Taran, by his order dated 08.06.2001 after taking into consideration the fact that the petitioner was suspended with effect from 11.12.2000 "... on charge of coming on duty in drunken position and remained absent from 11.02.2000...", passed the order of dismissal from service. In the appeal filed by the petitioner, the appellate authority upheld the order passed by the

Senior Superintendent of Police, Tarn Taran dated 08.06.2001, by an order dated 26.12.2002 (Annexure P-6). A perusal of paragraph 5 of the appellate order reveals that the past blemished record of the petitioner was also taken into consideration, although, no reference to the same was made in the show cause notices issued to him.

The order of punishment dated 08.06.2001 and the appellate order dated 26.12.2002 were further challenged by the petitioner, by filing a revision petition. The aforesaid revision petition was dismissed by the Inspector General of Police, Border, Amritsar by an order dated 30.01.2004.

It is, therefore, apparent that the respondents while imposing the punishment of dismissal from service on the petitioner took into consideration a charge not at all levelled against the petitioner, namely, of coming on duty in a drunken condition, and also past blemished record, which was not subject matter of the show cause notices issued to him. We are of the considered view that a charge not levelled against the petitioner in the charge-sheet could not have been taken into consideration while inflicting the punishment upon him. We are also of the view that if the authorities were desirous of taking into consideration past record of the petitioner, the show cause notice issued to the petitioner ought to have made a reference to the same and the petitioner afforded an opportunity to respond thereto. Since the aforesaid material has admittedly been taken into consideration while passing the order of dismissal at the hands of the punishing authority, and also by the appellate authority, we are of the view that the punishment order dated 08.06.2001, the appellate order dated 26.12.2002 as well as the revisional order dated 30.01.2004 deserve to be set aside. The same are, accordingly, set aside.

It would, however, be pertinent to notice, that learned counsel for the respondents vehemently contended, that the punishing authority, did not take into consideration the fact that the petitioner had come to duty in a drunken position while passing the order dated 08.06.2001. Additionally, it is submitted that past blemished record, was subject matter of consideration, when the appellate authority upheld the punishment inflicted upon the petitioner. It is not possible for us to accept the instant contention of the learned counsel for the respondents. So far as the issue of coming to the duty in drunken position is concerned, a perusal of the punishment order dated 08.06.2001, reveals that the aforesaid fact had been taken into consideration (relevant part of the order has been extracted herein above). So far as the issue of taking into consideration the past blemished record is concerned, details in respect thereof are contained in paragraph 5 of the appellate order.

Liberty is, however, granted to the respondents to pass a fresh order in accordance with law.

Disposed of in the aforesaid terms.

(J.S. Khehar)
Judge

November 21, 2006
vkd

(S.D. Anand)
Judge